



Association for Local Telecommunications Services

EX PARTE OR LATE FILED

(202) 969-2583
RMETZGER@ALTS.ORG

RICHARD J. METZGER
VICE PRESIDENT &
GENERAL COUNSEL

August 7, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20054

Re: CC Docket No. 96-115

Dear Ms. Salas:

The attached letter dated July 16, 1998, is today being filed as an ex parte communication in the above docket on behalf of both ADP and ALTS.

Sincerely,


Richard J. Metzger

cc: K. Brown
J. Schlichting
J. Atkinson
D. Attwood
D. Galbi
W. Kehoe
D. Konuch
T. Rutherford
K. Schroder

RECEIVED

AUG - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

082

July 16, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-115

Dear Ms. Salas:

Pursuant to staff requests, the Association of Directory Publishers ("ADP") and the Association for Local Telecommunications Services ("ALTS") hereby explain why (1) ILECs that collect subscriber list information ("SLI" or "listings") from CLECs should provide such SLI to independent directory publishers; and (2) the Commission possesses abundant authority under which to impose such a requirement.

By requiring ILECs to provide independent directory publishers with CLECs' SLI, the Commission would enhance competition in the directory publishing and local exchange industries. Without such a requirement, CLECs and independent publishers will face unnecessary costs, threatening the competitive underpinnings of the Telecommunications Act of 1996.

I. Section 222(e) Requires ILECs To Provide Independent Directory Publishers With SLI Obtained From CLECs.

Section 222(e) of the Communications Act of 1934 ("Section 222(e)") requires a telecommunications carrier that gathers SLI "in its capacity as a provider of [telecommunications] service" to provide such SLI to any person upon request.¹ In the course of providing telecommunications services, ILECs collect SLI from CLECs. BellSouth's interconnection agreements, for example, state that interconnection is conditioned upon the "execution of an agreement between [BellSouth's directory affiliate ("BAPCO"))]"

¹ 47 U.S.C. § 222(e) (all references to the "Act" are to the Communications Act of 1934).

and the CLEC for the provision of "Directory Listings and Directory Distribution."² In other words, the CLEC is compelled to sign an agreement with BellSouth's directory affiliate or forgo the interconnection agreement. An ILEC's interconnection agreement is inextricable from the provision of telecommunications service. When an ILEC gathers SLI pursuant to such an agreement, therefore, it does so "in its capacity as a provider" of telecommunications service. Thus, under Section 222(e), any SLI collected from a CLEC by an ILEC must be provided to independent directory publishers.

Section 222(e) also requires ILECs to provide SLI on "nondiscriminatory" rates, terms, and conditions.³ As described above, ILECs' directory publishing affiliates receive CLECs' SLI as a byproduct of interconnecting with the CLEC. By providing CLECs' SLI to their own publishing affiliate but not to independent directory publishers, ILECs discriminate between end users of SLI, in direct violation of Section 222(e).⁴

In the larger context of the pro-competitive goals of the Telecommunications Act of 1996, competition in the directory publishing and local exchange markets will be thwarted unless the Commission requires ILECs to provide independent directory publishers with CLECs' SLI. Independent directories that do not contain the listings of CLEC customers will be unable to compete with ILEC directories that, by virtue of the ILECs' market power in telecommunications services, contain all ILEC and CLEC

² Winstar Agreement § 2(a), filed in ADP Ex Parte Filing of Mar. 4, 1997 (Tab 6); see also ACSI Interconnection Agreement Attachment C-8 (requiring that ACSI "execute a directory listing agreement with BAPCO"), ACSI BAPCO Agreement § 2(a) (requiring ACSI to "provide to BAPCO, or its designee, at ACSI's expense and at no charge, listing information"), filed in ADP Ex Parte Filing of Mar. 4, 1997 (Tab 7).

³ 47 U.S.C. § 222(e).

⁴ See id. See also Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Doc. No. 96-68, ¶ 142 (Aug. 8, 1996) ("Local Competition Second Report") ("Under the general definition of 'nondiscriminatory access,' competing providers must be able to obtain at least the same quality of access to [directory listings] that a LEC itself enjoys.").

listings.⁵ Moreover, CLEC customers whose listings fail to appear in independent directories will be less inclined to continue subscribing to the CLEC.

ILEC refusal to provide CLEC listings to independent publishers imposes unnecessary burdens on publishers and CLECs. Publishers will be forced to identify and obtain listings from every CLEC in their directory coverage area. CLECs will be forced to build an infrastructure and employ personnel to process these requests. To avoid such costs and enhance competition among directory publishers and providers of telecommunications services, the Commission should require ILECs to provide independent publishers with CLECs' SLI.

II. The Commission Possesses Ample Authority To Compel ILECs to Provide Independent Directory Publishers with CLECs' SLI.

By its very terms, Section 222(e) grants the Commission authority to govern ILEC provision of CLEC listings. As stated above, the statute does not distinguish SLI acquired from CLECs as opposed to other sources. ILECs must provide all SLI gathered by virtue of providing telecommunications service to any person who so requests. By definition, this includes CLECs' SLI. The Commission may promulgate any rules necessary to implement this statutory mandate.⁶

Even if the Commission were to ignore this clear grant of authority, it could rely on the equally clear authority established in section 2 of the Act. Under this provision, the Commission has jurisdiction over "all interstate and foreign communication by wire. . . ." Communication by wire in turn includes "all instrumentalities, facilities, apparatus, and services . . . incidental to" the transmission of signals.⁸ ILECs collect and disseminate SLI in conjunction with their provision of telecommunications service. As the interconnection agreements referenced above show, ILECs collect CLECs' SLI as a

⁵ See ADP Ex Parte Filing of Apr. 7, 1998 (providing copies of an affiliated directory publisher's listing compared with an independent's that was not provided competitive LEC SLI).

⁶ See 47 U.S.C. § 154(i).

⁷ 47 U.S.C. § 152(a).

⁸ 47 U.S.C. § 153(51) (emphasis added). See also Beehive Telephone, Inc., Memorandum Opinion and Order, 12 FCC Rcd 17930, ¶ 16 (1997) (service ancillary to actual transmission of signals is within Commission's jurisdiction).

condition precedent to interconnecting with such CLECs. The provision of CLECs' SLI by ILECs therefore is a service incidental to the provision of telecommunications services and falls squarely within the Commission's plenary authority.

Given the Commission's statutory authority over ILEC provision of CLEC listings, it should be noted that the D.C. Circuit has upheld the Commission's authority to impose requirements in the interest of fairness among competitors.⁹ In Mobile Telecommunications, the Court upheld the Commission's authority under Section 4(i) and Section 309(a) of the Act to impose a payment condition on a PCS wireless licensee.¹⁰ The Commission, striving to create a more level playing field among license bidders, reasoned that a failure to impose such conditions "would have a significant adverse impact on the competitive marketplace."¹¹ Just as the Commission sought to foster a competitive wireless market, it should --indeed, under the statute it must-- foster competition in the directory publishing and local exchange markets. To accomplish this goal, the Commission may impose requirements on ILECs and should require ILECs to provide independent directory publishers with CLECs' SLI.

⁹ See Mobile Telecommunications Technologies Corp. v. FCC, 77 F.3d 1399, 1404-07 (D.C. Cir. 1996), cert. denied, 117 S.Ct. 81 (1996) (upholding the Commission's authority to impose payment but remanding for failure to consider all arguments raised).


¹⁰ Id.


¹¹ Nationwide Wireless Network Corp., Memorandum Opinion and Order, FCC 98-94, File No. 22888-CD-P/L-94, at ¶ 7 (Rel. June 3, 1998) (reimposing payment following D.C. Circuit remand).

Ms. Magalie Roman Salas
July 16, 1998
Page 5

Please do not hesitate to contact Michael Finn or David Goodfriend at Willkie Farr & Gallagher, (202) 328-8000, should you need further information.

Sincerely,


Heather Burnett Gold
President, ALTS


R. Lawrence Angove
President, ADP

cc: Kathryn Brown
James D. Schlichting
Jay M. Atkinson
Dorothy Attwood
Douglas Galbi
William A. Kehoe, III
David A. Konuch
Tanya Rutherford
Katherine Schroder